

**Office of Chief Counsel
Internal Revenue Service
memorandum**

CC:SB:8:LN:2:GL-124442-01
WBDouglass

date: AUG 27 2001

to: Area 14 Technical Support Territory West
Attention: Ms. Julie Piazza, Suits and Litigation Advisor

from: WILLIS B. DOUGLASS
Attorney (SBSE)

subject: **Suspension of the Collection Statute under I.R.C. Sec. 6334(e)**

This memorandum responds to your request for assistance dated April 30, 2001. This memorandum should not be cited as precedent.

ISSUES

1. Is the statute of limitations on collection, I.R.C. § 6502(a), suspended during the approval process described in I.R.C. § 6334(e)? If so, what dates are to be used in computing the new collection statute expiration date?

2. Can the IRS rely on I.R.C. § 6503(b) to extend the collection statute in cases brought under I.R.C. § 6334(e)?

CONCLUSIONS

1. The collection statute is not suspended by an action under I.R.C. § 6334(e). However, if the application to seize the principal residence is filed in court before the expiration of the collection statute, the IRS would be allowed to proceed with the seizure and sale of the principal residence if the court otherwise approves.

2. The IRS cannot rely on I.R.C. § 6503(b). This statute applies only when the taxpayer's assets are brought under the control and custody of a court by the actions of a third party, not when they are brought into the court's custody by actions of the IRS.

FACTS

This opinion does not address case-specific facts. You have posed a question that involves only the general application of law.

ANALYSIS

If a taxpayer neglects or refuses to pay his taxes upon demand, the amount of the unpaid taxes becomes a lien on all property or rights to property of the delinquent taxpayer. I.R.C. § 6321. The IRS has the right to enforce its lien through levy on the delinquent taxpayer's property, and levy includes the power of distraint and seizure by any means. I.R.C. § 6331. A taxpayer's principal residence is exempt from levy or seizure if the amount of the levy does not exceed \$5,000.00. I.R.C. § 6334(a)(13)(A). In addition, the principal residence of any taxpayer is exempt from levy even when the levy exceeds \$5,000.00 unless the procedures of subsection (e) of I.R.C. § 6334 are followed. I.R.C. § 6334(a)(13)(B). In order to levy on a principal residence in cases in which the amount of the levy exceeds \$5,000.00, the IRS must first obtain written approval from a judge or magistrate of the appropriate United States District Court. I.R.C. § 6334(e)(1).

If the assessment of a tax liability has been made within the period of limitation applicable thereto, the tax may be collected by a levy or by a proceeding in court if the levy is made or the proceeding in court is commenced within ten years of the assessment date. I.R.C. § 6502(a). We believe that the approval procedure mandated by I.R.C. § 6334(e) is a "proceeding in court" within the meaning of that phrase as it is used in I.R.C. § 6502(a). Therefore, we believe that if an application for approval of a seizure of a principal residence is filed with the appropriate United States District Court prior to the expiration of the statute of limitations on collection, the IRS may proceed to make a valid seizure and sale if the application is otherwise approved by the judge or magistrate.


However, we do not believe that commencement of the procedure under I.R.C. § 6334(e) stops the running of the collection statute insofar as the collection statute affects the personal liability of the debtor. If the statute of limitations on collection expires after the IRS has filed its application under I.R.C. § 6334(e) in the district court, the IRS would be allowed to complete the seizure and sale of the residence if the court otherwise approved, but any other collection action would be barred by limitations as of the date on which the statute expired. Therefore, we recommend that the procedure described in I.R.C. § 6334 not be used in short-statute situations. In short-statute situations, if the IRS wishes to continue collection actions after the expiration of the statute of limitations on collection, the IRS should sue to reduce the assessment to judgment and to foreclose the federal tax lien.

In your transmittal, you asked whether the IRS could rely on I.R.C. § 6503(b) as authority for the proposition that the

collection statute of limitations is suspended by the commencement of the procedure described by I.R.C. § 6334(e). I.R.C. § 6503(b) provides that the collection statute is suspended while the taxpayer's assets are under the control or custody of a court, and for six months thereafter. The regulations indicate that I.R.C. § 6503(b) applies only if "all or substantially all" of the taxpayer's assets are under the control or custody of the court. Treas. Reg. § 301.6503(b)-1. We have found no authority which directly addresses your question. If a taxpayer owned other assets besides his principal residence, the IRS could not argue that I.R.C. § 6503(b) applies. If the principal residence were the taxpayer's only asset, the situation is less clear. Nevertheless, we believe that I.R.C. § 6503(b) applies only to situations in which the actions of a third party have brought the taxpayer's assets into the custody of a court. We do not believe that I.R.C. § 6503(b) applies to situations in which the IRS has brought the taxpayer's assets into court. Therefore, we do not recommend that the IRS rely on I.R.C. § 6503(b) as a means of extending the collection statute in cases where actions have been filed under I.R.C. § 6334(e).

Since nothing further remains to be done on this case, we are closing our file. If you have any questions, please contact the undersigned at (949) 360-2691.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse affect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.


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